IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 17805 OF 2007

Dated : August 28, 2007

Between:

P.Ambareesha Sharma

Petitioner

AND

The Director of Animal Husbandry,
Andhra Pradesh, Hyderabad and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 17805 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records relating to the order dated 29.12.2006 passed in O.A. No. 11579 of 2002 by the Andhra Pradesh Administrative

Tribunal, Hyderabad, and the Memo L.Dis. No. 24158/B.IV/B5/2002 dated 11.09.2002 issued by the first respondent and to struck down the same holding that the petitioner is entitled for promotion to the post of Senior Assistant from the feeder category of Typist on par with his juniors, with all consequential benefits, the petitioner filed this writ petition.

The petitioner herein filed the above O.A. before the Tribunal assailing Memo L/Dis. No. 24158/BIV/B5/2002 dated 11.09.2002 issued by the first respondent rejecting the request of the petitioner to appoint him in the Special Promotion Post Scale on completion of 16 years of incremental service, in the cadre of typist.

The facts, in brief, are that the petitioner was appointed as Field Assistant on 23.5.1981 and subsequently appointed by transfer as Typist on 16.5.1986 and his services were regularised on the post of Typist with effect from 24.5.1986 and his probation was also declared on the said post on 23.6.1987. The petitioner was transferred to the Directorate of Animal Husbandry on 20.9.1990. His name in the inter se seniority list figured at Sl. No.2. The case of the petitioner is that in view of his seniority as No.1, after the retirement of one Mr. Chari, he is entitled for the post of Senior Assistant, but since he did not pass both the Animal Husbandry Test and Accounts Test for Subordinate

Officers, Part-I, which is necessary for promotion to Senior Assistant, he is entitled to be appointed in the Special Promotion Post Scale in the cadre of Typist, which was rejected by the respondent No.1 through the impugned proceedings. Hence, the present writ petition.

It is the contention of the learned counsel for the petitioner that in view of the adhoc Rules issued in GO Ms. No. 165 General Administration Department dated 22.4.1997 read with GO Ms. No. 225 General Administration Department dated 18.5.1999, the petitioner need not pass the prescribed tests inasmuch as he has crossed the age of 45 years.

This claim was resisted by the respondents contending that the petitioner was promoted from the post of Field Assistant to a higher scale of pay i.e., Typist. It is also contended that GO Ms. No. 225 dated 18.5.1999 is applicable only in respect of one promotion i.e. from first category to the next higher category and, therefore, he has to pass both the Animal Husbandry Test and Accounts Test for Subordinate Officers, Part-I for further promotions and, as such, he is neither eligible for promotion as Senior Assistant nor entitled to be appointed to the Special Promotion Post Scale, in the cadre of Typist.

The Tribunal, having regard to the submissions advanced before it, observed that the petitioner who was

earlier working in the A.P. Agricultural Subordinate Service, was appointed to the post of Typist in the A.P. Ministerial Service and he got the benefit of pay fixation and as such the restriction enumerated in GO Ms. No. 225 Dated 18.5.1999 in the form of first proviso, disentitles the petitioner for promoting him to higher category, unless he is otherwise eligible for promotion and therefore, dismissed the O.A.

The learned counsel for the petitioner sought to argue the same grounds, which were raised before the Tribunal and the impugned order came to be passed.

The petitioner takes shelter under GO Ms. No. 165 dated 22.4.1997 and GO Ms. No. 225 dated 18.5.1999, claiming exemption from passing the Animal Husbandry Test and the Accounts Test for Subordinate Officers, Part – I, under. The Adhoc Rule says that notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or to the Special Rules or Adhoc Rules, the Government Employees who have crossed 45 years of age, shall be exempted from passing of the Departmental Tests prescribed in the Special Rules for the purpose of promotion to the next higher category i.e. promotion/appointment by transfer to the post above the one held by such an employee, if they could not pass the same. Admittedly, the petitioner was once promoted from the category of Field Assistant to the category of

Typist, carrying higher scale of pay and his pay was regulated and fixed giving the advantage of FR 22(b). Hence, the benefit under GO Ms. No. 225 dated 18.5.1999 cannot be claimed by the petitioner. Evidently, the Adhoc Rules framed under GO Ms. No. 165 dated 22.4.1997 does not speak about the applicability of the said Rules retrospectively, so as to make the same applicable to the petitioner's case. Having regard to the facts and circumstances of the case, we are of the considered view that the Tribunal has rightly negatived the prayer of the petitioner. We do not see any ground to interfere with the impugned order.

Consequently, the Writ Petition fails and is accordingly dismissed. No order as to costs.

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T.MEENA KUMARI, J.

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G.CHANDRAIAH, J.

August 28, 2007
MAS